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MADE. GIVEN THE DRAMATIC CHANGES THAT HAVE TRANSPRIRED
IN THE FORMER SOVIET UNION, MANY ELEMENTS OF OUR
NATIONAL SECURITY AND FOREIGN POLICY ARE UNDER REVIEW.
HOWEVER, IT IS UNLIKELY THERE WILL BE ANY SUBSTANTIAL
CHANGES TO OUR EXPORT CONTROL POLICY BEFORE THE KOREANS
PLAN TO SELECT A LAUNCH PROVIDER FOR KOREASAT. END
FYI. BOTTOM LINE: UNDER CURRENT USC POLICY AS PROVIDED
IN THE ITAR, EXPORTS OF U.S. BUILT SATELLITES FOR LAUNCH
IN THE FORMER SOVIET UNION ARE ALMOST CERTAINLY TO BE
DENIED.

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INFO AMEMBASSY MOSCOW
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United States Department of State
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Review Authority: MILLER, ROBERT
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TAGS: TSPA, ETTC, CH, KS, REXP

SUBJECT: U.S. RESTRICTIONS ON FOREIGN LAUNCHES OF U.S.
SATELLITES

REF: SEOUL 546

1. REFTEL REQUESTED TEXTS OF PERTINENT REGULATIONS AND
CLARIFICATION OF U.S. POLICY AND REGULATIONS REGARDING
RESTRICTION ON EXPORTS OF U.S.-BUILT SATELLITES TO PRC
AND FORMER USSR. REFTEL ALSO STATES KOREA TELECOM
REQUIRES THESE REGULATIONS IN ORDER TO "TURN DOWN THE
SOVIET AND CHINESE BIDS."

RESTRICTIONS ON SOVIET LAUNCHES

2. APPLICABLE PORTIONS OF THE INTERNATIONAL TRAFFIC IN
ARMS REGULATIONS (ITAR) (22 CFR 128-138) STATE:
"SECTION 126.1 PROHIBITED EXPORTS NO SALES TO CERTAIN
COUNTRIES. IN GENERAL, IT IS THE POLICY OF THE UNITED
STATES TO DENY LICENSES AND OTHER APPROVALS WITH RESPECT
TO DEFENSE ARTICLES AND DEFENSE SERVICES DESTINED FOR OR

ORIGINATING IN CERTAIN COUNTRIES OR AREAS. THIS POLICY
ALSO APPLIES TO EXPORTS TO AND IMPORTS FROM THESE
COUNTRIES OR AREAS. THIS POLICY APPLIES TO ALBANIA,
BULGARIA, CUBA, ESTONIA, CAMBODIA, LATVIA, LITHUANIA,
NORTH KOREA, OUTER MONGOLIA, ROMANIA, THE SOVIET UNION
AND VIETNAM." FYI: WE ARE CURRENTLY AMENDING THE ITAR
TO LIST THE INDIVIDUAL REPUBLICS OF THE FORMER SOVIET
UNION AS PROHIBITED DESTINATIONS. END FYI.

3. MOST U.S. MANUFACTURED SPACE COMMODITIES, INCLUDING
ALL SATELLITES AND COMPONENTS SPECIFICALLY DESIGNED FOR
SATELLITES, ARE CURRENTLY CONTROLLED ON THE U.S.

MUNITIONS LIST (SECTION 121.1 OF THE ITAR). AS SUCH,
THEY ARE CONSIDERED DEFENSE ARTICLES AND SUBJECT TO THE
RESTRICTIONS OF SECTION 126.1 OF THE ITAR. FYI:
EXCEPTIONS TO THE POLICY STATED IN SECTION 126.1 MAY BE
MADE AT THE DISCRETION OF THE DIRECTOR OF THE OFFICE OF
DEFENSE TRADE CONTROLS. ALTHOUGH EXCEPTIONS ARE RARELY

4. GUIDANCE CONCERNING LAUNCHES OF U.S. BUILT
SATELLITES FROM THE PRC IS MORE COMPLEX. AS DESCRIBED
BELOW, BOTH CONGRESS AND THE PRESIDENT HAVE IMPOSED
RESTRICTIONS ON EXPORTS OF U.S.-BUILT SATELLITES TO THE
PRC. BOTTOM LINE: UNTIL PRC AGREEMENT TO OBSERVE THE
MTCR GUIDELINES AND PARAMETERS IS FINALIZED,
EXECUTIVE-BRANCH IMPOSED SANCTIONS CURRENTLY IN PLACE
THAT PROHIBIT THE EXPORT OF U.S. BUILT SATELLITES TO THE
PRC ARE NOT LIKELY TO BE LIFTED. EVEN IF THESE
SANCTIONS ARE LIFTED, THERE ARE STILL ADDITIONAL
LEGISLATIVE RESTRICTIONS AND PRESIDENTIAL WAIVERS
REQUIRED BEFORE U.S. EXPORT LICENSES FOR SATELLITES
COULD BE APPROVED.

LAUNCH SERVICES MOA

5. THE U.S. AND CHINA CONCLUDED A SERIES OF AGREEMENTS
IN LATE 1988 AND EARLY 1989 TO COVERING TECHNICAL
SAFEGUARDS, LIABILITY AND TRADE FOR LAUNCH OF U.S.
SATELLITES BY CHINESE LAUNCH VEHICLES. THE U.S.-PRC

MEMORANDUM OF AGREEMENT REGARDING INTERNATIONAL TRADE IN
COMMERCIAL LAUNCH SERVICES (LAUNCH SERVICES MOA)
RESTRICTS CHINESE LAUNCHES TO NINE WITHIN THE SIX-YEAR
TERM OF THE AGREEMENT, LIMITS BUNCHING OF LAUNCHES TO NO
MORE THAN THREE PER YEAR, AND REQUIRES CHINESE FIRMS TO
"OFFER AND CONCLUDE ANY CONTRACTS TO PROVIDE COMMERCIAL
LAUNCH SERVICES TO INTERNATIONAL CUSTOMERS AT PRICES,
TERMS, AND CONDITIONS PREVAILING IN THE INTERNATIONAL
MARKET FOR COMPARABLE COMMERCIAL LAUNCH SERVICES." THE
LAUNCH SERVICES AGREEMENT ALSO INCLUDES RESTRICTIONS ON
GOVERNMENT INDUCEMENTS TO SALE, SUCH AS PROVIDING
PREFERENTIAL TRADE OPPORTUNITIES LINKED TO A LAUNCH
CONTRACT.

6. THE AGREEMENT ALLOWS THE U.S. TO TAKE ANY ACTION
PERMITTED UNDER U.S. LAWS AND REGULATIONS IF THERE IS
CLEAR EVIDENCE OF A VIOLATION. UNDER U.S. IMPLEMENTING
GUIDELINES, SUCH ACTION COULD TAKE THE FORM OF SECTION
301 (USTR-INITIATED) OR SECTION 382 (INDUSTRY-INITIATED)
INVESTIGATIONS UNDER THE 1974 TRADE ACT. IN ADDITION,
USITR ADVISES THE SECRETARY OF STATE OF THE STATUS OF THE
AGREEMENT'S IMPLEMENTATION "IN ORDER THAT THIS
INFORMATION MAY BE AVAILABLE TO THE SECRETARY WITH
RESPECT TO EXPORT LICENSE RESPONSIBILITIES."

7. CHINA HAS WON ONLY ONE BID, FOR LAUNCH OF THE
ARABSAT 1-C SATELLITE, SINCE SIGNED THE AGREEMENT. THE
ARABSAT CONSORTIUM SUBSEQUENTLY WITHDREW THE AWARD OF
THAT CONTRACT. CHINA'S ARABSAT B10 RAISED SERIOUS
QUESTIONS IN THE USC AND U.S. INDUSTRY ABOUT COMPLIANCE
WITH THE LAUNCH SERVICES MOA. THE USC EXAMINED THIS
MATTER BUT DID NOT REACHED A DETERMINATION BEFORE THE
CONTRACT WAS CANCELLED. MISSILE PROLIFERATION SANCTIONS
IMPOSED BY THE PRESIDENT ON JUNE 16, 1991, WERE NOT
TAKEN UNDER THE PROVISIONS OF THIS MOA. RESTRICTIONS ON
CHINESE LAUNCHES

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FOREIGN RELATIONS AUTHORIZATION ACT

8. LICENSES FOR EXPORT TO CHINA OF ITEMS ON THE U.S. MUNITIONS LIST ARE CURRENTLY SUSPENDED UNDER LEGISLATIVE SANCTIONS IN THE FOREIGN RELATIONS AUTHORIZATION ACT, FY90 AND FY91 (PL 101-246) (FRAA). IMPOSED AFTER CHINA'S JUNE 1989 MILITARY CRACKDOWN. SATELLITE AND RELATED LAUNCH TECHNOLOGIES ARE AMONG THE ITEMS CONTAINED IN THE USML THAT ARE SUBJECT TO THESE SANCTIONS. IN ADDITION, THE FRAA SPECIFICALLY SUSPENDS EXPORTS OF U.S.-ORIGIN SATELLITES INTENDED FOR LAUNCH ON PRC-OWNED LAUNCH

VEHICLES. ABSENT CERTAIN POLITICAL CHANGES IN CHINA, PARTICULARLY IN THE AREA OF HUMAN RIGHTS, THESE SUSPENSIONS CAN ONLY BE WAIVED IF THE PRESIDENT DETERMINES THAT A PARTICULAR EXPORT IS IN THE U.S. "NATIONAL INTEREST." TO DATE, NATIONAL INTEREST WAIVERS FROM THE FRAA SUSPENSIONS HAVE BEEN GRANTED ONLY IN THE CASES OF THE AUSSAT COMMUNICATIONS AND FREJA SCIENTIFIC SATELLITES. (A WAIVER WAS PREVIOUSLY GRANTED TO THE ASIASAT AND AUSSAT SATELLITES UNDER LEGISLATION THAT HAS SINCE EXPIRED.)

JUNE 16 MISSILE PROLIFERATION SANCTIONS

9. ON JUNE 16, 1991, THE PRESIDENT ANNOUNCED THAT HE WOULD IMPOSE CONSTRAINTS ON HIGH TECHNOLOGY TRADE WITH THE PEOPLE'S REPUBLIC OF CHINA AS A RESULT OF CHINESE MISSILE TECHNOLOGY TRANSFERS TO OTHER COUNTRIES. IN ADDITION TO LIMITING SALES OF HIGH PERFORMANCE COMPUTERS TO CHINA, THE PRESIDENT STATED THAT HE WOULD NOT WAIVE FRAA SANCTIONS PROHIBITING THE TRANSFER OF U.S. TECHNOLOGY FOR SATELLITES LAUNCHED ON CHINESE ROCKETS. HE ALSO INITIATED LEGAL PROCEDURES TO IMPOSE SANCTIONS REQUIRED PURSUANT TO THE FY 1991 NATIONAL DEFENSE AUTHORIZATION ACT (NDAA) ON TWO CHINESE COMPANIES, CHINA GREAT WALL INDUSTRY CORPORATION AND CHINA PRECISION MACHINERY IMPORT-EXPORT CORPORATION, FOR TRANSFERS TO PAKISTAN OF MISSILE-RELATED TECHNOLOGY COVERED BY THE MISSILE TECHNOLOGY CONTROL REGIME (MTCR) ANNEX.

NATIONAL DEFENSE AUTHORIZATION ACT

10. THE COMPANY-SPECIFIC SANCTIONS, IMPOSED JUNE 25 UNDER AMENDMENTS TO THE ARMS CONTROL EXPORT ACT AND EXPORT ADMINISTRATION ACT CONTAINED IN THE NATIONAL DEFENSE AUTHORIZATION ACT, FY91 (PL 101-510), REQUIRE THE USC TO DENY LICENSE APPLICATIONS TO EXPORT ITEMS COVERED BY THE MTCR ANNEX FOR TWO YEARS AND DENY USC

CONTRACTS RELATING TO SUCH ITEMS. SATELLITE AND LAUNCH-RELATED ITEMS AFFECTED BY THE SANCTIONS MAY BE LISTED IN EITHER THE USML OR USDOC'S COMMODITY CONTROL LIST. THESE SANCTIONS CAN ONLY BE WAIVED "IF THE PRESIDENT DETERMINES THAT SUCH WAIVER IS ESSENTIAL TO THE NATIONAL SECURITY OF THE UNITED STATES."

11. AN AMENDMENT TO THE NDAA MISSILE PROLIFERATION SANCTIONS, CONTAINED IN THE FOREIGN RELATIONS AUTHORIZATION ACT, FY92 AND FY93 (PL 102-138), LIMITS FLEXIBILITY IN IMPOSING ANY FUTURE SANCTIONS IN THE EVENT OF NEW CHINESE MISSILE-RELATED TRANSFERS. ANY SUCH SANCTIONS COULD NO LONGER BE IMPOSED AGAINST INDIVIDUAL CHINESE ENTITIES ONLY; BUT WOULD HAVE TO BE IMPOSED AGAINST ALL CHINESE GOVERNMENT ACTIVITIES RELATED TO MISSILE EQUIPMENT AND TECHNOLOGY AND TO DEVELOPMENT OR PRODUCTION OF ELECTRONICS, SPACE SYSTEMS OR EQUIPMENT, AND MILITARY AIRCRAFT. THESE EXPANDED

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SANCTIONS ON U.S. EXPORTS TO CHINA WOULD AFFECT ONLY U.S. MUNITIONS LIST ITEMS. HOWEVER, SANCTIONS ON IMPORTS INTO THE U.S. FROM CHINA REQUIRED IF A TRANSFER SUBSTANTIALLY CONTRIBUTES TO MISSILE DEVELOPMENT IN A NON-MTCR COUNTRY, WOULD APPLY TO ALL THE ABOVE FIELDS. THE AMENDMENT DOES NOT AFFECT THE SANCTIONS WAIVER PROVISIONS.

COMMERCE/JUSTICE/STATE APPROPRIATIONS ACT

12. THE 1992 COMMERCE/JUSTICE/STATE APPROPRIATIONS ACT (CJS) (PL 102-141) DENIES THE USE OF FUNDS TO REINSTATE OR APPROVE ANY EXPORT LICENSE APPLICATIONS FOR THE

LAUNCH OF U.S.-BUILT SATELLITES ON CHINESE-BUILT LAUNCH VEHICLES. THE PROHIBITION MAY BE WAIVED BY THE PRESIDENT IN THE NATIONAL INTEREST OR, ON A CASE-BY-CASE BASIS, UPON CERTIFICATION BY THE USTR THAT CHINA IS IN FULL COMPLIANCE WITH THE 1989 LAUNCH SERVICES MOU. SINCE THIS PROVISION WOULD ALLOW THE PRESIDENT TO CONTINUE GRANTING NATIONAL INTEREST WAIVERS FOR SATELLITE EXPORTS IF HE CHOOSES TO DO SO, IT DOES NOT SUBSTANTIALLY ALTER EXISTING SANCTIONS OR WAIVER REQUIREMENTS.

ADDITIONAL LEGISLATION UNDER CONSIDERATION

13. CONGRESS IS NOW CONSIDERING PROPOSALS TO APPLY FURTHER SANCTIONS ON EXPORTS OF U.S. SATELLITES FOR LAUNCH FROM CHINA IN THE OMNIBUS EXPORT AMENDMENTS ACT (EEA) (PASSED BY THE SENATE AS S. 328 AND BY THE HOUSE AS H.R. 3489). THE SENATE VERSION WOULD PROHIBIT U.S. SATELLITE EXPORTS FOR LAUNCH FROM PRC-OWNED ROCKETS UNLESS THE USTR CERTIFIES THAT CHINA IS IN FULL COMPLIANCE WITH THE LAUNCH SERVICES MOU. (THIS DIFFERS FROM THE CJS PROVISION IN THAT IT WOULD REQUIRE A USTR CERTIFICATION IN ADDITION TO AN FRAA NATIONAL INTEREST WAIVER.) THE HOUSE VERSION WOULD BAN EXPORT OF U.S.-ORIGIN SATELLITES FOR LAUNCH FROM A PRC-OWNED LAUNCH VEHICLE, WITHOUT ANY WAIVER PROVISION. WE ARE NOT ABLE AT THIS TIME TO PREDICT WHICH OF THESE VERSIONS IS LIKELY TO SURVIVE A CONFERENCE BETWEEN THE HOUSES. THE ADMINISTRATION HAS RAISED SERIOUS OBJECTIONS TO SEVERAL PROVISIONS IN THE EEA WHICH, IF NOT REMEDIED,

COULD LEAD TO A VETO BY THE PRESIDENT.

STATUS OF SATELLITE SANCTIONS

14. DURING SECRETARY BAKER'S NOVEMBER 1991 VISIT TO BEIJING, THE CHINESE GOVERNMENT SAID THAT IT INTENDED TO OBSERVE THE MTCR GUIDELINES AND PARAMETERS IF THE U.S. REMOVED THE MISSILE PROLIFERATION SANCTIONS IMPOSED JUNE 16. ONCE THIS AGREEMENT IS FINALIZED, THE U.S. IS WILLING TO LIFT THE SANCTIONS IMPOSED ON JUNE 16. IF THE PROLIFERATION SANCTIONS ARE LIFTED, THE U.S. WOULD RESUME CASE-BY-CASE REVIEW OF APPLICATIONS FOR SATELLITE EXPORTS FOR LAUNCH FROM CHINESE ROCKETS. SUCH EXPORTS WOULD REMAIN SUBJECT TO EXISTING LEGAL RESTRICTIONS. I.E., FRAA NATIONAL INTEREST WAIVERS WOULD STILL BE NECESSARY. FURTHER NDAA SANCTIONS COULD BE IMPOSED IF CHINA ENGAGES IN SANCTIONABLE MISSILE TECHNOLOGY TRANSFERS, AS WELL AS ADDITIONAL POSSIBLE NEW REQUIREMENTS IMPOSED BY LAW (E.G., USTR CERTIFICATION) MIGHT NEED TO BE MET. BAKER

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